

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF PUERTO RICO

IN RE:

Case No. 10-08187 (MCF)

LEANDRO RAFAEL RODRIGUEZ RAMOS  
and NELIMAR REYES TORRES,

Chapter 13

Debtors

LEANDRO RAFAEL RODRIGUEZ RAMOS  
and NELIMAR REYES TORRES,

Adv. No. 11-00268 (MCF)

Plaintiffs,

v.

BANCO POPULAR DE Puerto Rico,

Defendant.

**OPINION AND ORDER**

Before the court is the central issue of whether defendant Banco Popular de Puerto Rico (hereinafter "BPPR") holds a valid mortgage on plaintiff Leandro Rafael Rodriguez Ramos and Nelimar Reyes Torres' real property under Puerto Rico's "Act to Streamline the Property Registry" enacted on December 27, 2010, 2010 P.R. Laws No. 216 (in Spanish titled "Ley para Agilizar el Registro de la Propiedad," 30 L.P.R.A. §§ 1821-1831, hereinafter referred to as "Law 216").<sup>1</sup>

---

<sup>1</sup>Unless otherwise indicated, all statutory references to Law 216 are from the English slip translation, 2010 P.R. Laws No. 216.

1 Both parties filed cross motions for summary judgment.<sup>2</sup> The  
2 Chapter 13 Trustee stated his position with respect to the motions  
3 for summary judgment which BPPR opposed and Debtors replied.<sup>3</sup>  
4

5 After considering the motions and the arguments presented at  
6 the oral hearing, the Court grants in part and denies in part the  
7 cross motions for summary judgment, for the reasons set forth below.  
8

#### 9 **I. JURISDICTION AND VENUE**

10 The court has jurisdiction to hear this case, pursuant to 28  
11 U.S.C. §§ 1334(b) & 157(a) and the general order of the United  
12 States District Court dated July 19, 1984 (Torruellas, C.J.). This  
13 is a core proceeding, pursuant to 28 U.S.C. § 157(b). Venue lies  
14 in this district, pursuant to 18 U.S.C. §§ 1408 & 1409.  
15

#### 16 **II. UNDISPUTED FACTS**

17 Based upon the parties' Statement of Uncontested Facts,  
18 exhibits thereto, the pleadings and the docket entries of both the  
19 adversary and bankruptcy cases, the uncontested material facts are  
20 as follows:  
21

- 22 1. On June 26, 2008, the Debtors acquired a real property  
23 located in Bayamon, Puerto Rico from Milagros Torres  
24 Ortiz ("Torres Ortiz"), through the purchase and sale  
25

---

<sup>2</sup>Dockets Nos. 15; 16, 23, 24, 25, 31 and 35.

<sup>3</sup>Dockets Nos. 36, 38 and 41.

1 deed number 17 before the Notary Public Ignacio  
2 Villamarzo Garcia (hereafter "Purchase Deed").<sup>4</sup>

3 2. On the same date, Debtors executed mortgage deed number  
4 18 before the same notary public to guarantee a mortgage  
5 note in the principal amount of \$108,605.00 with  
6 interest at the rate of 6% per annum in favor of RG  
7 Premier Bank (hereafter "Mortgage Deed").<sup>5</sup>

8 3. BPPR is now the current holder of the aforementioned  
9 mortgage note.<sup>6</sup>

10 4. On July 7, 2008, both the Purchase Deed and the Mortgage  
11 Deed were presented by fax to the Registry of Property,  
12 Bayamon Section 1 for recordation purposes at entry  
13 number 1003 and entry number 1005, respectively, of  
14 Daily Entries Book number 1276.<sup>7</sup>

15 5. These presentation entries expired ("caducaron" in  
16 Spanish) on August 1, 2008, because certified copies of  
17 both deeds were not physically delivered to the Registry  
18 of Property in accordance with Puerto Rico law.<sup>8</sup>

19  
20  
21  
22  
23  
24  
25 <sup>4</sup>BPPR's Statement of Uncontested Facts ¶ 1 (Docket No. 15); Opposition to  
BPPR's Statement of Uncontested Facts ¶ 1 (Docket No. 24); Amended Complaint ¶  
10 (Docket No. 12); Answer to the Amended Complaint ¶ 10 (Docket No. 17).

<sup>5</sup>Amended Complaint ¶ 10 (Docket No.12); Answer to the Amended Complaint ¶ 10  
(Docket No. 17).

<sup>6</sup>BPPR's Statement of Uncontested Facts ¶ 8 (Docket No. 15); Debtors' Statement  
of Uncontested Facts ¶ 8 (Docket No. 24).

<sup>7</sup>BPPR's Statement of Uncontested Facts, Exhibit 1, Title Search dated January  
12, 2012 (Docket No. 15).

<sup>8</sup>Id.

- 1           6.    The Mortgage Deed was presented for a second time to the  
2                Registry of Property on November 6, 2008, at entry  
3                number 1053 of the Daily Entries Book number 1278.<sup>9</sup>  
4  
5           7.    The Purchase Deed was never presented again to the  
6                Registry of Property.<sup>10</sup>  
7  
8           8.    The title of the property has not been recorded in the  
9                name of the Debtors.<sup>11</sup>  
10  
11          9.    Torres Ortiz appears as the registered title owner of the  
12                subject property.<sup>12</sup>  
13  
14          10.   On September 4, 2010, approximately two (2) years after  
15                the Mortgage Deed was presented in the Registry of  
16                Property, the Debtors filed a voluntary petition under  
17                chapter 13 of the Bankruptcy Code.<sup>13</sup>  
18  
19          11.   By virtue of the enactment of Law 216 on December 27,  
20                2010, the Registrar recorded the Mortgage Deed in the  
21                Registry of Property on March 21, 2011.<sup>14</sup>  
22  
23

---

24 <sup>9</sup> Id.; Amended Complaint ¶ 12 (Docket No. 12); Answer to the Amended Complaint  
25 ¶ 12 (Docket No. 17).

<sup>10</sup> Amended Complaint ¶ 12 (Docket No. 12); Answer to the Amended Complaint ¶ 12  
(Docket No. 17).

<sup>11</sup> Answer to the Amended Complaint ¶ 9 (Docket No. 17).

<sup>12</sup> Amended Complaint ¶ 9 (Docket No. 12); Answer to the Amended Complaint ¶ 9  
(Docket No. 17).

<sup>13</sup> Amended Complaint ¶ 8 (Docket No. 12); Answer to the Amended Complaint ¶ 8  
(Docket No. 17).

<sup>14</sup> Certification from the Registry of Property issued on March 21, 2011 (Docket  
No. 22, Debtors' Exhibit 1).

1 12. The deadline to file unsecured claims in the bankruptcy  
2 case of the Debtors, Case No. 10-08187, was January 4,  
3 2011.

4  
5 13. On November 5, 2010, the court confirmed the plan dated  
6 October 21, 2010, without an objection from BPPR.<sup>15</sup>

7 14. On August 19, 2011, BPPR filed proof of claim number 4-1  
8 as secured in the bankruptcy case for \$107,480.82,  
9 including \$892.24 for pre-petition arrears.<sup>16</sup>

10  
11 15. The confirmed plan does not provide for BPPR's secured  
12 proof of claim.<sup>17</sup>

### 13 **III. PROCEDURAL HISTORY**

14 On September 16, 2011, the Debtors objected to BPPR's claim,  
15 challenging its secured status and arguing that BPPR does not have  
16 evidence to support the perfection of security due to the lack of  
17 successive chain of title in the Registry of Property. Debtors  
18 assert that BPPR's claim is consequently unsecured and it is time  
19 barred because it was filed after the bar date for unsecured  
20 claims.<sup>18</sup>

21  
22  
23 On December 1, 2011, BPPR filed a reply to the objection to  
24 claim, alleging that its Mortgage Deed was recorded by virtue of  
25

---

<sup>15</sup> Docket No. 24 in Case No. 10-08187.

<sup>16</sup> BPPR's Statement of Uncontested Facts ¶ 13 (Docket No. 15); Debtors' Statement of Uncontested Facts ¶ 13 (Docket No. 24).

<sup>17</sup> Amended Chapter 13 Payment Plan dated October 21, 2010 (Docket No. 18 in Case No. 10-08187).

<sup>18</sup> Docket No. 31 of Case No. 10-08187.

1 Law 216, thereby making BPPR a secured creditor.<sup>19</sup>

2 On December 16, 2011, Debtors filed the instant adversary  
3 proceeding asserting the following four causes of action against  
4 BPPR: 1) challenging the recordation of the Mortgage Deed as a  
5 voidable transfer and violation of the automatic stay; 2)  
6 challenging the recordation of the Mortgage Deed as a voidable  
7 preferential transfer; 3) BPPR's unsecured claim should be  
8 disallowed in its entirety because it was filed after the bar date  
9 for filing unsecured claims; and 4) BPPR's should be imposed  
10 sanctions, fees and costs for filing a false secured claim.<sup>20</sup>

11 At the hearing to consider the cross motions for summary  
12 judgment, the parties submitted their arguments to the  
13 consideration of the court.<sup>21</sup>

#### 14 IV. DISCUSSION

15 By agreement of the parties,<sup>22</sup> this matter is appropriate for  
16 summary judgment disposition as there are no material facts in  
17 dispute and one of the parties is entitled to judgment as a matter  
18 of law, pursuant to Fed.R.Civ.P. 56, as made applicable to these  
19 proceedings by virtue of Fed.R.Bankr.P. 7056. Celotex v. Catrett,

20  
21  
22  
23  
24  
25  

---

<sup>19</sup> Docket No. 37 of Case No. 10-08187. The objection to claim was essentially held in abeyance pending resolution of the adversary proceeding.

<sup>20</sup> Amended Complaint (Docket No. 12).

<sup>21</sup> Minutes of Hearing held on January 31, 2013 (Docket No. 47).

<sup>22</sup> Id.

1 477 U.S. 317 (1986) (citing Anderson v. Liberty Lobby, Inc., 477  
2 U.S. 242, 250 (1986)); Vega-Rodriguez v. Puerto Rico Tel. Co., 110  
3 F.3d 174, 178 (1st Cir. 1997).

4  
5 **A. PARTIES' POSITION ON LIEN STATUS**

6 Debtors challenge BPPR's status as a secured creditor because  
7 BPPR failed to present the Purchase Deed along with the  
8 presentation of the Mortgage Deed in the Registry of Property  
9 before the commencement of the bankruptcy case. Debtors argue that  
10 the registration of the Mortgage Deed is invalid under Article 57  
11 of the Puerto Rico Mortgage Act of 1979, P.R. Laws Ann. tit. 30, §  
12 2260, because there is a lack of successive chain of title in the  
13 Registry of Property (in Spanish "tracto registral"). In other  
14 words, without the presentation of the Purchase Deed, the real  
15 property cannot be encumbered by the Debtors through the Mortgage  
16 Deed because the registered owner is Torres Ortiz and she did not  
17 execute the Mortgage Deed. To validly perfect the Mortgage Deed,  
18 Debtors claim that prior to the commencement of the bankruptcy case  
19 BPPR had to present the Purchase Deed to establish that Debtors had  
20 the right to encumber the real property in question as required by  
21 Puerto Rico Mortgage Law.

22  
23 BPPR counters that it has a secured claim because the Mortgage  
24 Deed was presented to the Registry of Property before the filing of  
25 the petition and the Mortgage Deed was recorded by virtue of Law

1 216. BPPR argues that Law 216 allows for the automatic inscription  
2 of documents pending recordation before the Registry of Property as  
3 of April 30, 2010. Since BPPR's Mortgage Deed had been presented  
4 in 2008 and was pending recordation as of April 30, 2010, it was  
5 automatically recorded by virtue of Law 216. BPPR believes that  
6 the fact that the Purchase Deed was unrecorded does not affect the  
7 validity of the lien given the provisions of Law 216. In addition,  
8 BPPR argues that Debtors are the owners of the property, even if  
9 the property is not registered in their names. So in the bank's  
10 view, the lack of successive chain of title is irrelevant under Law  
11 216.<sup>23</sup>

14 Debtors, on the other hand, argue that Law 216 creates a  
15 presumption of validity but said presumption may be rebutted.  
16 Debtors contend that they have rebutted the presumption of validity  
17 of the mortgage because there is a missing link in the successive  
18 chain of title, thereby invalidating the recordation of the  
19 Mortgage Deed.

21 BPPR concedes that lack of chain of title would have resulted  
22 in a finding of error by the Registry of Property.<sup>24</sup> However, it  
23 would have sixty (60) days to correct the error from its  
24 notification by simply presenting the Purchase Deed in the Registry  
25 of Property. With the correction, the Mortgage Deed would have

---

<sup>23</sup> BPPR's Motion for Summary Judgment at 3, 11 and 19 (Docket No. 16).

<sup>24</sup> BPPR's Opposition to the Trustee's Motion at 9 (Docket No. 38).



1 preserved its position in the Registry and would have been  
2 retroactively recorded as of the date of its presentation.

3 The Trustee argues that the filing of the bankruptcy petition  
4 precludes the correction of the chain of title defect. The Trustee  
5 believes that BPPR has not demonstrated that post-petition  
6 perfection of its claim is permissible under the exception  
7 established by 11 U.S.C §§ 362(b)(3) and 546(b).<sup>25</sup>

8  
9 **B. SECTIONS 362(b)(3) AND 546(b)(1)(A)**

10 One of the fundamental protections afforded a debtor in  
11 bankruptcy is the automatic stay. It provides the debtor a  
12 "breathing spell" from creditors. 3-362 COLLIER ON BANKRUPTCY ¶  
13 362.03 [hereinafter Collier]; H.R. Rep. No. 95-595, 95th Cong. 1st.  
14 Sess. 340-342 (1977); S. Rep. N. 989, 95th Cong. 1st Sess. 54-55  
15 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5840, 6296-97. It bars  
16 a wide range of creditor activities against a debtor to collect,  
17 sue or foreclose, including "any act to create, perfect, or enforce  
18 any lien against property of the estate." 11 U.S.C. § 362(a)(4).  
19 See also 11 U.S.C. § 362(a)(5) ("any act to create, perfect, or  
20 enforce against property of the debtor....").  
21  
22  
23  
24  
25

---

<sup>25</sup> Unless otherwise indicated, all statutory references are to title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*, as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8 (the "Bankruptcy Code"). Trustee's Motion to Comply with Court Order (Docket No. 34).

1        However, the automatic stay is not without limits. There are  
2 exceptions to the automatic stay that are listed in § 362(b), which  
3 are to be read narrowly. 11 U.S.C. § 362(b)(1)-(28); Hillis  
4 Motors, Inc. v. Hawaii Auto Dealers' Ass'n, 997 F.2d 581 (9th Cir.  
5 1993). One of the exceptions, pertinent here, § 362(b)(3) provides  
6 that the automatic stay does not extend to:

7  
8                    any act to perfect, or to maintain  
9                    or continue the perfection of, an  
10                    interest in property to the extent  
11                    that the trustee's rights and powers  
12                    are subject to such perfection under  
13                    section 546(b) of [the Bankruptcy  
14                    Code] or to the extent that such act  
                    is accomplished within the period  
                    provided under section 547(e)(2)(A)  
                    of this title.

15 11 U.S.C. § 362(b)(3).

16        To be eligible for this exception, BPPR has to satisfy three  
17 requirements: "there must be (1) an 'act to perfect' (2) an  
18 'interest in property' (3) under circumstances in which the  
19 perfection-authorizing statute fits within the contours of section  
20 546(b)(1)(A)." 229 Main St. Ltd. P'ship v. Massachusetts Dept. of  
21 Env'tl. Protection (In Re 229 Main St. Ltd. P'ship), 262 F.3d 1, 4  
22 (1st Cir. 2001). Section 362(b)(3) does not create new rights or  
23 interests for the creditor. "Instead, it merely permits perfection,  
24 or maintenance or continuation of perfection, free of the automatic  
25 stay that would otherwise be applicable, under circumstances in  
which the creditor's action would be effective against a trustee."

1 3 Collier ¶ 362.05[4].

2 "While section 362(b)(3) limits the automatic stay, its  
3 companion statute, Section 546(b), limits the debtor's power to  
4 avoid statutory liens under the so-called strong arm provision."<sup>26</sup>  
5 Soto-Rios v. Banco Popular de P.R., 662 F.3d 112, 116 (1st Cir.  
6 2011). Once a bankruptcy petition is filed, the bankruptcy trustee  
7 (or the debtor here) is vested with the authority as a hypothetical  
8 bona fide purchaser of real property to avoid any transfer of the  
9 property or obligation of the debtor to the extent allowed under  
10 state law.  
11

12  
13 Section 546(b)(1)(A) serves to "protect, in spite of the  
14 surprise intervention of a bankruptcy petition, those whom State  
15 law protects by allowing them to perfect their liens as of an  
16 effective date that is earlier than the date of perfection." Perez  
17 Mujica v. FirstBank (In re Perez Mujica), 457 B.R. 177 (Bankr.  
18 D.P.R. 2011)(Lamoutte, J.), aff'd, --- F. Supp.2d ---, 2013 WL  
19 1408766(D.P.R. April 9, 2013)(Dominguez, J.) (quoting S. Rep. No.  
20 989, 95th Cong., 2d Sess. 86-87 (1978), reprinted in App. Pt.  
21 4(e)(i); H.R. Rep. No. 595, 95th Cong., 1st Sess. 371-372 (1977),  
22 reprinted in App. Pt. 4(d)(i)).  
23  
24

25  
Thus, simply stated, if a creditor  
possesses a prepetition interest in  
property, and state law establishes  
a time period for perfection of a

---

<sup>26</sup>The other companion statute, § 547(e)(2)(A), is not pertinent to this case.

1           lien based upon that interest, the  
2           'lien does not lose its preferred  
3           standing by reason of the fact that  
4           it [is] not perfected until after  
5           the commencement of a bankruptcy' so  
6           long as it is perfected within the  
7           time period established by state  
8           law.

9           Perez Mujica, 457 B.R. at 185(citing Lincoln Sav. Bank, FSB v.  
10           Suffolk Cnty Treasurer (In re Parr Meadows Racing Ass'n), 880 F.2d  
11           1540, 1546 (2d Cir. 1989), cert. denied, 493 U.S. 1058, 110 S.Ct.  
12           869, 107 L.Ed.2d 953 (1990) (quoting Poly Indus., Inc. v. Mozley,  
13           362 F.2d 453, 457 (9th Cir. 1966)).

14           For a creditor to enjoy this haven from the trustee's avoiding  
15           powers: three elements must be met: "(1) the creditor must act  
16           pursuant to a law of general applicability; (2) that law must allow  
17           the creditor to perfect an interest in property; and (3) such  
18           perfection must be effective against previously acquired rights in  
19           the property." 229 Main St., 262 F.3d at 10. "The gist of section  
20           546(b)(1)(A) is that 'the filing of a bankruptcy petition does not  
21           prevent the holder of an interest in property from perfecting its  
22           interest if, absent the bankruptcy filing, the interest holder  
23           could have perfected its interest against an entity acquiring  
24           rights in the property before the date of perfection.'" Id. at 12  
25           (quoting 5 Collier on Bankruptcy ¶ 546.03[2][a]).

1           1.    Interest in Property

2           Applying these parameters to the case at bar, both §§  
3           362(b)(3) and 546(b)(1) require BPPR to have a pre-petition

1 interest in property in order to be able to perfect its security  
2 after the petition is filed. In 229 Main St., 262 F.3d at 14, the  
3 U.S. Court of Appeals for the First Circuit defined "interest in  
4 property," as that term is used in § 362(b)(3), to mean  
5 "unequivocal to, and broader than, the term 'lien.'" Id. at 13.  
6 In other words, a party may have an interest in the property that  
7 is not necessarily tantamount to a lien. In a subsequent appellate  
8 case, Soto-Rios, dealing precisely with an unrecorded but presented  
9 mortgage deed before Puerto Rico's Registry of Property, the court  
10 stressed that "our primary focus is whether Banco Popular gained a  
11 pre-petition property interest in substance and scope that is  
12 superior to that of a bona fide purchaser or a judicial lien holder  
13 in accord with sections 362(b)(3) and 546(b)(1)(A)." Soto-Rios,  
14 662 F.3d 117.  
15  
16  
17

18 BPPR argues: (1)it presented the Mortgage Deed two years prior  
19 to the bankruptcy petition; (2)the presentment of the Mortgage Deed  
20 created an interest in the real property; and (3) Puerto Rico  
21 Mortgage Law and Law 216 which authorize the recording of a lien  
22 have a relation back provision and fit within the contours of §  
23 546(b). In support of its position, BPPR cites Tosado v. Banco  
24 Popular de P.R. (In re Soto-Rios), 420 B.R. 57 (Bankr. D.P.R.  
25 2009), aff'd sub nom. Soto-Rios v. Banco Popular de P.R. (In re  
Soto-Rios), 662 F.3d 112 (1<sup>st</sup> Cir. 2011), wherein the bankruptcy

1 court determined that the mortgage deed that was presented pre-  
2 petition but unrecorded in the Registry of Property at the time of  
3 the bankruptcy petition coupled with the relation back provision of  
4 Article 53 of the P.R. Mortgage Law, P.R. Laws Ann. tit. 30, §  
5 2256, rendered the creditor a secured party.  
6

7 We conclude that BPPR satisfied the interest in property prong  
8 required in both §§ 362(b)(3) and 546(b)(1) due to the mere  
9 presentation of the Mortgage Deed two years before the filing of  
10 the petition. As discussed in the leading case of Soto-Rios, the  
11 presentation of the mortgage deed at the Registry of Property is  
12 the catalyst for the recordation process in Puerto Rico. Under  
13 Article 53 of the P.R. Mortgage Law, P.R. Laws Ann. tit. 30, §  
14 2256, "[p]resentment, as the decisive act for securing rank  
15 provided notice to the public, including to any bona fide  
16 purchaser, of the parties' mortgage transaction and the acts to  
17 preserve priority." Soto-Rios, 662 F.3d at 122. When the document  
18 is actually recorded in the Registry of Property, it relates back  
19 to the moment of its presentation. P.R. Laws Ann. tit. 30, § 2256;  
20 Soto-Rios, 662 F.3d at 121-122; Perez Mujica, 457 B.R. at 187.  
21 BPPR presented its Mortgage Deed before the filing of Debtors'  
22 bankruptcy case, thereby acquiring an interest in property.  
23  
24  
25

Debtors point out that under Puerto Rico Mortgage Law the  
Mortgage Deed is defective because the mortgagor does not appear as

1 the registered property owner of the real property that BPPR is  
2 attempting to encumber. However, the courts have found that the  
3 presentation of the document in the Registry of Property prior to  
4 filing bankruptcy relief gives the holder an interest in the  
5 property even though there may be known or alleged defects in the  
6 Registry of Property. Perez Mujica, 457 B.R. at 187) ("The court  
7 concludes that the mortgage creditor had a pre-petition property  
8 interest, but had knowledge of the expiration of the registry entry  
9 for deed ... due to the public nature of the information in the  
10 Property Registry."), aff'd Perez Mujica, 2013 WL 1408766 at 8 (The  
11 court found that the bank had properly shown that it has an  
12 interest in property, as opposed to a lien because the record shows  
13 that the bank has been unable to perfect the lien on two grounds.);  
14 In re Feliciano Alvarado, 463 B.R. 200, 211 (D.P.R. 2011) (the  
15 court found that the creditor had a potential secured claim and  
16 remanded the case for further proceedings to determine whether the  
17 creditor would be allowed to perfect its security interest by  
18 obtaining a certification from the Registry of Property regarding  
19 the recordation and presentation history).

20  
21 In the instant case, both parties admit that the pre-petition  
22 presentation of the Mortgage Deed was actually recorded by the  
23 Registrar after the petition was filed even though there is lacking  
24 successive chain of title in the Registry of Property.  
25

1 Nevertheless, the presentation of the Mortgage Deed in the Registry  
2 of Property provides an interest in property to BPPR under §§  
3 362(b)(3) and 546(b)(1), although not necessarily a valid lien over  
4 the property. Perez Mujica, 457 B.R. at 187.

6 2. Perfection

7 As to second requirement for the exception of the automatic  
8 stay to apply, BPPR must establish the existence of "any act to  
9 perfect, or to maintain or continue the perfection, of an interest  
10 in property" under § 362(b)(3). "[U]nder Puerto Rico law, the  
11 registration is a 'constitutive' act for a mortgage, and without  
12 the existence of a mortgage, a creditor only has an unsecured  
13 personal obligation regarding the underlying debt." Soto-Rios, 662  
14 F.3d at 121. The definition of "constitutive" is: "(1) Making a  
15 thing what it is; essential and (2) Having power to institute,  
16 establish, or enact." The American Heritage® Dictionary of the  
17 English Language (4th ed. 2009).

20 The civil code sets forth the  
21 'essential requisites' of a mortgage  
22 contract, including that a mortgage  
23 'be constituted to secure the  
24 fulfillment of a principal  
25 obligation. P.R. Laws Ann. tit. 31,  
§§ 5001, 5002.



1                   Additionally, the civil code  
2                   prescribes that 'it is  
3                   indispensable, in order for the  
4                   mortgage to be validly constituted,  
5                   that the instrument in which it is  
6                   created be entered in the registry  
7                   of property. P.R. Law Ann. tit. 31, §  
8                   5042.' A companion statute under the  
9                   mortgage law also provides that '[i]n  
10                   order for voluntary mortgages to be  
11                   validly constituted' the mortgage  
12                   must be 'stipulated in a deed' and  
13                   must 'be recorded in the Property  
14                   Registry.' P.R. Laws Ann. tit. 30, §  
15                   2607.

16 Soto-Rios, 662 F.3d at 118-19.

17                   Along with the presentation requirement, the mortgage must  
18                   gain access to the registry by complying with the successive  
19                   ownership tract ("tracto registral") principle governing our  
20                   Mortgage Law. S.J. Credit, Inc. v. Ramirez, 113 P.R. Offic. Trans.  
21                   181, 189 (1982). See also P.R. Laws Ann. tit. 30, § 2260.<sup>27</sup> Under  
22                   this principle, the Registry must keep the link or connection of  
23                   the acquisitions in a successive and chronological order of

---

24 <sup>27</sup> Article 57 of the P.R. Mortgage Law, P.R. Laws Ann. tit. 30, § 2260,  
25 provides:

                 [i]n order to record documents that  
                 declare, convey, encumber, modify or  
                 extinguish dominion and other real rights  
                 on real property, the right of the person  
                 who grants them or in whose name the  
                 referred transaction or contracts are  
                 granted must appear previously recorded.  
                 Registration shall be refused if the right  
                 is recorded in the name of a person other  
                 than the one who is granting the  
                 conveyance or lien. However, resolutions  
                 and judgments referred to in §§3761-2777  
                 of this title may be recorded without the  
                 previous registration requirement.

1 titleholders to maintain a perfect continuity between all  
2 registered acts of purchase, disposition or levy so that it  
3 reflects the history of that particular property. LUIS RAFAEL  
4 RIVERA RIVERA, DERECHO REGISTRAL INMOBILIARIO PUERTORRIQUEÑO 219 (2d.  
5 ed., 2002)[hereinafter Rivera Rivera]; II R.M. ROCA SASTRE, DERECHO  
6 HIPOTECARIO 87, 237 (7ma ed., Barcelona, Ed. Bosch, 1979).  
7  
8 Successive chain of title must be present or in existence before  
9 the mortgage can be recorded and claim a secure footing to a  
10 person's real property. P.R. Laws Ann. tit. 30, § 2260. Absent  
11 that continuity, the particular right cannot gain access to the  
12 Registry. Id. A real property right will be denied recordation in  
13 cases where the property right is recorded in the name of a person  
14 different from the grantor. Rivera Rivera, supra at 220. In other  
15 words, the person executing the mortgage must be the registered  
16 title owner or have pending for recordation his title to the  
17 property that is to be encumbered by the mortgage.  
18  
19  
20

21 Although BPPR had presented its Mortgage Deed in the Registry  
22 prior to the petition date, it is undisputed that the Purchase Deed  
23 was not presented. The Purchase Deed is necessary to attain  
24 successive chain of title. According to the Title Search dated  
25 January 12, 2012, that was attached by BPPR to its Statement of  
Uncontested Facts, both Purchase Deed and Mortgage Deed had been  
presented, via fax, to the Registry of Property but said

1 presentations had lapsed ("caducaron") for failure to physically  
2 deliver the documents to the Registry. Article 34 of the P.R.  
3 Mortgage Law, P.R. Laws Ann. tit. 30, § 2154, allows the  
4 presentation of documents by facsimile but the documents must be  
5 physically presented within 10 days in order to maintain its  
6 presentation rank.<sup>28</sup> The Mortgage Deed was later presented to the  
7 Registry; however, the Purchase Deed was never presented again.  
8 Consequently, the property is currently registered in favor of  
9 another party, Torres Ortiz. The Purchase Deed evidencing that the  
10 property was sold by the registered owner, Torres Ortiz, to the  
11 Debtors is absent from the Registry. This is a fatal defect that  
12 prevents the post-petition perfection of the interest in property  
13 into a valid recordable lien over the subject property. BPPR's  
14 mortgage cannot be validly recorded as a lien in accordance to  
15 Article 57 of the P.R. Mortgage Law, P.R. Laws Ann. tit. 30, §  
16 2260. Hence, there is no act to perfect because BPPR failed to do  
17 all that is required by Puerto Rico law. Soto-Rios, 662 F.3d at  
18 122; Perez Mujica, 457 B.R. at 189.

---

24 <sup>28</sup> Article 34 of the P.R. Mortgage Law, P.R. Laws Ann. tit. 30, § 2154 states  
25 in part:

[t]he presentation of documents shall be  
done personally, by mail or electronic  
means, and by fax to reserve the entry of  
presentation, which shall be completed  
through the physical presentation of the  
document within 10 working days from the  
presentation via fax, as provided by  
regulations.

1 In the Soto-Rios case, the bank had presented the mortgage  
2 deeds two years before the bankruptcy filing but the record was  
3 "devoid of any suggestion that the documents were defective in any  
4 manner or that Banco Popular bears any responsibility for the  
5 lengthy delay." 662 F.3d at 122. The circuit court noted that "[i]n  
6 normal course of events anticipated that, absent noticed and  
7 uncured defects, recording of the three mortgage deeds would have  
8 occurred well before the debtors filed for bankruptcy." Id. The  
9 court further pointed out that the newly enacted Law 216 recognized  
10 that there was a widespread delay in the Registry of Property that  
11 was not the fault of the applicants. Id.

12 Unlike the Soto-Rios case, BPPR in this case had not acted to  
13 secure the in personam obligation over the real property by failing  
14 to present the Purchase Deed before the bankruptcy proceedings  
15 commenced. Thus, BPPR did not take all necessary administrative  
16 steps in its power to effectuate due recording of its mortgage as  
17 required by 229 Main St., 262 F.3d at 7, and Soto-Rios, 662 F.3d at  
18 122. Consequently, at the time of petition, BPPR is not a holder of  
19 a validly secured lien according to Puerto Rico Mortgage Law.

20  
21  
22  
23  
24 **C. LAW 216**

25 BPPR insists that it is a holder of a secured claim because  
its mortgage was recorded in the Registry of Property after the  
filing of the bankruptcy case by the enactment of Law 216. Both the

1 Debtor and the Trustee argue that the post-petition enactment of  
2 Law 216 does not provide a secured status to BPPR.

3 According to Law 216, "any document presented in the Property  
4 Registry by April 30, 2010, shall be deemed to be recorded" except  
5 for enumerated exceptions which are not pertinent in this case.  
6 Art. 2 of 2010 P.R. Law 216 (effective February 10, 2011). The  
7 legislative intent behind Law 216 was to deal with the approximate  
8 600,000 documents that were pending recordation in the Registry of  
9 the Property, and to facilitate the recordation of documents that  
10 in several instances took over 10 to 15 years for the registrar to  
11 be able to review and record.  
12  
13

14 Various factors have caused this  
15 delay, to wit, the dramatic increase  
16 in the presentation of documents  
17 during the 1990s; the slow  
18 implementation of modern  
19 computerized systems, the complexity  
20 of the documents; and above all, the  
21 serious disproportion between the  
22 human and fiscal resources allocated  
23 to the Property Registry and the  
24 function it carries out within our  
25 society.

2010 P.R. Laws No. 216 at 2.

24 The delay in the recordation process impedes the mortgage  
25 "loans from having actual guarantees, which renders access to  
capital and consequently, economic growth more difficult." Law  
216's Statement of Motives, 2010 P.R. Laws No. 216 at 2; Sanchez  
Diaz v. Estado Libre Asoc., 181 D.P.R 810,826-827 (2011). The delay

1 also "jeopardizes the legal process regarding real property and  
2 impairs the rights of citizens." Law 216's Statement of Motives.  
3 As a result of this situation, Law 216 passed as a temporary  
4 measure.  
5

6 After the law went into effect, the Mortgage Deed was recorded  
7 post-petition despite the fact that there was a "missing link" in  
8 the chain of registered title. However, Law 216 does not save BPPR  
9 from the inevitable conclusion that there is a defect in the  
10 recordation which prevents BPPR from having a valid registered lien  
11 on the property.  
12

13 As expressed above, it is undisputed that at the moment of the  
14 filing of the petition the purported Mortgage Deed was presented by  
15 BPPR at the Registry of Property without presenting the Purchase  
16 Deed and that the mortgage could not be validly recorded in  
17 accordance to local law. Failure to present the Purchase Deed  
18 previous to the presentation of the Mortgage Deed necessarily  
19 results in the lack of successive chain of title. Without  
20 successive record, the mortgage lien may not be validly recorded in  
21 accordance to Article 57 of the P.R. Mortgage Act of 1979, P.R.  
22 Laws Ann. tit. 30, § 2260.  
23  
24

25 Although this Law was enacted in order to eliminate the  
backlog, ease the workload at the Registry and facilitate its  
modernization, it does not invalidate or leave without effect the

1 general principles that encompass the system of the Registry and  
2 Puerto Rico Mortgage Law. For that reason, Article 7 of Law 216  
3 establishes that "[r]ecords made in accordance with this Act shall  
4 be deemed to be correct." 2010 P.R. Laws No. 216 at 5; 30 L.P.R.A.  
5 § 1826. However, "[a]ny error shall be corrected pursuant to Act  
6 No. 198 of August 8, 1979, as amended, known as the 'Mortgage and  
7 Property Registry Act'; and the Regulations to Enforce the Mortgage  
8 and Property Act, Regulations No. 2674 of July 13, 1980, as  
9 amended, or any subsequent Regulations." Art. 7 of Law 216. See  
10 also Art. 11 of the Emergency Regulation for the Execution of Act  
11 216 of December 27, 2010. Law 216 creates, in essence, a rebuttable  
12 presumption of valid recordation.

13  
14  
15 BPPR argues that it is able to correct the defect after the  
16 filing of the petition because if the Registrar had issued a notice  
17 of defect it would have sixty (60) days to cure by simply  
18 presenting the Purchase Deed in the Registry.

19  
20 Law 216 in effect abolished the requirement of having the  
21 Registrar to review documents (known in Spanish as "calificar")  
22 that were pending inscription on or before April 30, 2010.  
23 Consequently, none of the Registrars will be issuing any notices of  
24 defect for documents that fall under Law 216's purview. In fact,  
25 according to the Certification from the Registry of Property issued  
on March 21, 2011, for the property in question, the Registrar

1 proceeded to record the Mortgage Deed by operation of law on the  
2 same date that she issued the Certification without issuing a  
3 notice of defect.

4       Once the bankruptcy petition is filed, the automatic stay  
5 prevents BPPR from presenting the Purchase Deed in the Registry.  
6 If BPPR had exercised due diligence by presenting the Purchase Deed  
7 when it presented the Mortgage Deed then it would be entitled to  
8 have its mortgage recorded post-petition under § 362(b)(3).  
9 Because the Purchase Deed was left out of the Registry at the time  
10 of the filing of the petition, Debtor has rebutted the presumption  
11 that the Mortgage Deed was validly recorded and BPPR cannot use Law  
12 216 as a shield.

13       BPPR is unable to use Article 69.1 of the P.R. Mortgage  
14 Regulation to harmonize the presented Mortgage Deed by subsequently  
15 presenting the absent Purchase Deed. This argument was similarly  
16 dealt with in the bankruptcy court's decision of Perez Mujica, 470  
17 B.R. 257, 255-256. In a motion for reconsideration filed by a  
18 creditor bank, the bankruptcy court rejected the application of  
19 Article 69 of the P.R. Mortgage Law because the presentation entry  
20 of the document lapsed when the defects notified on it remained  
21 uncorrected within the sixty (60) day limitation period provided,  
22 P.R. Laws Ann. tit. 30, § 2272. Perez Mujica, 470 B.R. at 256.

23       Similarly, in our case, the presentation entry of the Purchase  
24  
25



1 Deed by fax expired when the Purchase Deed failed to materialize in  
2 the offices of the Registrar within 10 days of the presentation via  
3 fax mandated in Article 34 of the P.R. Mortgage Law, P.R. Laws Ann.  
4 tit. 30 § 2154. The interrupted successive chain of title in the  
5 Registry invalidates the recordation that occurred by operation of  
6 Law 216.

8 In light of the above, the court concludes that the exception  
9 to the automatic stay does not apply because BPPR failed to prove  
10 an act to perfect, maintain or continue the perfection.<sup>29</sup> The court  
11 holds that BPPR does not have a validly perfected mortgage lien as  
12 a result of the missing link in title ownership, thereby resulting  
13 in BPPR holding an unsecured claim under Puerto Rico's Mortgage  
14 Law, Law 216, sections 362(b)(3) and 566(b)(1)(A).

#### 17 **D. The Timeliness of BPPR's Proof of Claim**

18 We now turn our attention to the issue of whether the  
19 unsecured claim of BPPR was timely filed. Both Debtor and the  
20 Chapter 13 Trustee contend that BPPR's claim should be disallowed  
21 because it was filed after the bar date elapsed.

23 The deadline to file unsecured claims was January 4, 2011.  
24 BPPR's claim number 4 was filed on August 19, 2011, eight (8)  
25 months after the bar date elapsed; and thus, was untimely filed.

---

<sup>29</sup> There is no need to address the remaining prong under § 546(b). Neither is it necessary to address Debtors' arguments of voidable post-petition transfer under § 549 nor avoidable preferential transfer under § 547(b) alleged in the Amended Complaint.

1 Pursuant to Fed.R.Bankr.P. 3002(c) and 9006(b)(3), the court  
2 does not have discretion to enlarge the time period to file an  
3 unsecured claim in a Chapter 13 case, unless one of the exceptions  
4 in Rule 3002(c) applies. In re Gardenshire, 209 F.3d 1145 (9th  
5 Cir. 2000); In re Greenig, 152 F.3d 631 (7th Cir. 1998); In re  
6 Quinones, 2011 Bankr. LEXIS 727 (Bankr. D.P.R. Mar. 2, 2011). None  
7 of the exceptions are applicable. Accordingly, BPPR's claim number  
8 4 is disallowed in its entirety.  
9  
10

#### 11 **E. Violation of the Automatic Stay**

12 Since the exception of the automatic stay does not apply,  
13 Debtors assert that BPPR's willfully violated the automatic stay by  
14 filing a secured claim in the legal case and a "false" secured  
15 claim "under clear and evident knowledge of the absence of a  
16 secured status."<sup>30</sup> They further allege that by filing of its claim,  
17 BPPR performed an act to enforce a lien, created post-petition,  
18 against property of the estate prohibited by § 362(a)(4)-(5).  
19  
20

21 BPPR argues that Debtors' cause of action for violation of the  
22 automatic stay fails because the post-petition recordation of the  
23 Mortgage Deed was caused by Registry and by virtue of the enactment  
24 of Law 216, not by any inducement on the part of BPPR.  
25

The mere filing of a proof of claim does not constitute a

---

<sup>30</sup>Plaintiffs' Motion for Summary Judgment at 12 (Docket No. 23).

1 violation of the automatic stay as determined by the U.S.  
2 Bankruptcy Appellant Panel for the First Circuit in Knowles v.  
3 Bayview Loan Servicing, LLC, (In re Knowles), 442 B.R. 150, 160  
4 (B.A.P. 1st Cir. 2011). It is not an act against a debtor. Id.  
5 The Bankruptcy Code allows for the filing of the proofs of claim by  
6 creditors so that they can participate in the bankruptcy process.  
7 Id.; See Zotow v. Johnson (In re Zotow), 432 B.R. 252, 261 (B.A.P.  
8 9th Cir. 2010) (while the automatic stay prevents creditor action  
9 against the debtor it fosters creditor participation in the  
10 bankruptcy case). The filing of proof of claim merely indicates the  
11 creditor's desire to participate in bankruptcy process. Generally,  
12 if a debtor disagrees with the amounts expressed in the proof of  
13 claim, debtor is free to object to the same. Although the filing  
14 of a claim may be construed as an act against the estate, the  
15 Bankruptcy Code allows for such an action. In addition, BPPR did  
16 not register the Mortgage Deed after the filing of the bankruptcy  
17 case; it was the Property Registrar who recorded the lien as a  
18 result of the passage of Law 216. Therefore, the Court holds that  
19 there is no basis for finding a willful violation of the automatic  
20 stay on behalf of BPPR for filing a proof of claim and for the  
21 post-petition recordation of its mortgage by the Registry of  
22 Property.  
23  
24  
25

1       Regarding the accusation of filing a false claim because BPPR  
2 had clear and evident knowledge of the absence of a secured status,  
3 the court rejects Debtor's argument because "[t]he effects of the  
4 new law have not been fully litigated ... in Puerto Rico." Soto-  
5 Rios, 662 F.3d at 114 n.1. We have found very few federal cases on  
6 Law 216 and much less at the local level. There are no Puerto Rico  
7 Supreme Court cases and only a few appellate cases, which are not  
8 applicable to resolve the issue that was raised in the cross  
9 motions. BPPR cannot be penalized when the law in this area is  
10 developing.  
11  
12

#### 13                                   **V. CONCLUSION**

14  
15       In summary, the Court holds that BPPR does not hold a secured  
16 claim because the Mortgage Deed was invalidly recorded after the  
17 filing of the petition. Therefore, BPPR's claim is unsecured.  
18 Since the unsecured claim was untimely filed, it is disallowed in  
19 its entirety. There was no automatic stay violation for filing an  
20 alleged secured claim or an alleged false claim.  
21  
22

#### 23                                   **ORDER**

24  
25       **WHEREFORE, IT IS HEREBY ORDERED** that plaintiffs Leandro Rafael  
Rodriguez Ramos and Nelimar Reyes Torees's motion for summary  
judgment (Docket No.23) is granted and denied in parts. It is

1 granted regarding the unsecured status of defendant Banco Popular  
2 de Puerto Rico's mortgage claim and Proof of Claim number 4 is  
3 disallowed in its entirety because it is untimely filed. It is  
4 denied as to the request for imposition of liability for the  
5 willful violation of the automatic stay and imposing liability,  
6 sanctions and/or attorney's fees for the filing of a falsely  
7 secured claim.  
8

9 Banco Popular de Puerto Rico's motion for summary judgment  
10 (Docket #16) is denied and granted in parts. It is denied as to  
11 the following: 1) with respect to the secured status under the  
12 exception to the automatic stay provided under 11 U.S.C. §§  
13 362(b)(3) and 546(b)(1)(A), Puerto Rico's Mortgage Law and Law 216;  
14 2) ordering Debtors to pay legal fees and costs to BPPR in the  
15 amount of \$7,000.00 for defending its claim pursuant to the terms  
16 of the note and the Mortgage Deed. BPPR's motion for summary  
17 judgment is granted with respect to denying Debtors' request for  
18 damages for violations of the automatic stay.  
19  
20  
21

22 **SO ORDERED.**

23 San Juan, Puerto Rico, this 24th day of May, 2013.

24 BY THE COURT:  
25



MILDRED CABAN FLORES  
U.S. Bankruptcy Judge